

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUB-TITLE 1 ADMINISTRATION

CHAPTER 1

RULES OF PRACTICE AND PROCEDURE

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Historical Note: Chapter 1 of Title 13, Administrative Rules, is based substantially upon the Rules of Practice and Procedure before the Board of Land and Natural Resources. [Eff. 7/26/62; R 6/22/81]

SUBCHAPTER 1

GENERAL PROVISIONS

§13-1-1 Purpose. This chapter governs practice and procedure before the board of land and natural resources of the State under Chapter 91, Hawaii Revised Statutes, the land laws of the State and such other related acts as may now or hereinafter be administered by the board. These rules shall be construed to secure the just, speedy, and inexpensive determination of every proceeding. [Eff. 6/22/81] (Auth: HRS §171-6) (Imp: HRS §91-2)

§13-1-2 Definitions. (a) As used in this title, unless the context requires otherwise:

"Board" means the board of land and natural resources.

"Chairperson" means the chairperson of the department of land and natural resources.

"Department" means the department of land and natural resources.

"Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party in a proceeding.

"Petitioner" means the party on whose behalf the petition or application is made.

"Proceeding" means the board's elucidation of the relevant facts and applicable law, consideration thereof, and action thereupon with respect to a particular subject within the board's jurisdiction, initiated by a filing or submittal or request or a board's notice or order, and shall include but not be limited to:

- (1) Proceeding involving the adoption of forest reserve or watershed boundaries;
- (2) Petitions for the creation of land use sub-zones in conservation districts;
- (3) Proceedings involving the adoption of forest, forest reserve, watershed, fish and game, water, parks, historical sites, recording and land development, use, management, disposal and acquisition rules;
- (4) Petitions or applications for the granting of any right, privilege, authority, or relief under or from any provision of law or of any rule or requirement made pursuant to a power granted by law;
- (5) An investigation or review instituted or requested to be instituted by the board;

- (6) Other proceedings involving the adoption, amendment, or repeal of any rule of the board, whether initiated by board order or notice or by petition of an interested person.

"Public records" is defined in section 92-50, Hawaii Revised Statutes. The term shall include all rules, written statements of policy or interpretation formulated, adopted or used by the board, all final opinions and orders, the minutes of meetings of the board and any other material required by law to be kept on file in the office of the board unless accorded confidential treatment pursuant to statute or the rules of the board.

(b) Unless otherwise specifically stated, the terms used in the rules adopted by the board pursuant to powers granted by statute shall have the meaning defined by such statute.

(c) A rule which defines a term without express reference defines the terms for all purposes as used both in the statute and in these rules, unless the context otherwise specifically requires.

[Eff. 6/22/81] (Auth: HRS §§91-2, 171-6)

(Imp: HRS §§91-2, 171-6)

§13-1-3 Office. The principal office of the board is at the Kalanimoku building, Honolulu, Hawaii. All communications to the board shall be addressed to the board of land and natural resources, 1151 Punchbowl Street, Honolulu, Hawaii, unless otherwise specifically directed. [Eff. 6/22/82]
(Auth: HRS §91-2) (Imp: HRS §91-2)

§13-1-4 Hours. The offices of the board shall be open from 7:45 a.m. to 4:30 p.m. of each day of the week except Saturday and Sundays and holidays unless otherwise provided by statute or executive order [Eff. 6/22/81] (Auth: HRS §91-2)
(Imp: HRS §§80-1, 91-2)

§13-1-5 Sessions. (a) The board meets and exercises its powers in any part of the State of Hawaii.

(b) Regular meetings of a board shall be held in Honolulu, on the second and fourth Fridays of each and every month; provided, however, that the board may establish another place or date for any regular meeting but shall give prior notice of the proposed changes in a newspaper of general circulation at least one week prior to the affected regular meeting.

(c) Special meetings may be convened by the chairperson of the board at any time by giving notice to each member present in the State at least five days prior to the date of the meeting; provided however that the notice shall not be required if all members present in the State agree and sign a written waiver of the notice. No final action involving disposition of public lands may be had at the special meeting.

(d) All meetings of the board shall be open to the public; provided, that the board may meet in executive session, from

which the public may be excluded, by a recorded vote of two-thirds of the members present. No order, ruling, contract, appointment, or decision shall be finally acted upon at the executive session. [Eff. 6/22/81] (Auth: HRS §171-6) (Imp: HRS §§171-5, 92-3, 92-4)

§13-1-6 Quorum. Four members of the board shall constitute a quorum to transact business and the concurrence of a simple majority of the members of the board shall be necessary to make any action of the board valid. [Eff. 6/22/81] (Auth: HRS §171-6) (Imp: HRS §171-5)

§13-1-7 Authentication. All orders and other actions of the board shall be authenticated or signed by the chairperson or other persons authorized by the board [Eff. 6/22/81] (Auth: HRS §171-6) (Imp: HRS §171-7)

§13-1-8 Chairperson. (a) The Chairperson shall in addition to any other duties, have charge of the board's official records and shall be responsible for the maintenance and custody of the files and records of the board, including the transcripts of testimony and exhibits, with all papers and requests filed in proceedings, the minutes of all action taken by the board and all its findings, determinations, reports, opinions, orders, rules, and approved forms.

(b) The chairperson shall also prepare for submission by the board an annual report of the department's activities, accomplishments, and recommendations to the governor and to the legislature through the governor. [Eff. 6/22/81] (Auth: HRS §171-6) (Imp: HRS §§171-6, 171-7)

§13-1-9 Public records. (a) All public records shall be available for inspection in the office of the board, Honolulu, Hawaii, during established office hours unless public inspection of these records is in violation of any state or federal law; provided that except where the records are open under any rule of court, the attorney general may determine which records may be withheld from public inspection when the records pertain to the preparation of the prosecution or defense of any action or proceeding to which the State is or may be a party, or when the records do not relate to a matter in violation of law and are deemed necessary for the protection of the character or reputation of any person.

(b) Public records printed or reproduced by the board in quantity shall be given to any person requesting the same by paying the fees established by the board or by law. Photocopies of public records shall be made and given by the director to any person upon request and upon payment of the fees established by the board or by law. Certified copies of extracts from public records shall also be given by the director upon payment of the fees established by the board or by law.

(c) Requests for public information, for permission to inspect official records, or for copies of public records shall be handled with due regard for the dispatch of other public duties. [Eff. 6/22/81] (Auth: HRS §171-6)
(Imp: HRS §§91-2, 92-21, 92-51)

SUBCHAPTER 2

PROCEEDINGS BEFORE THE BOARD

§13-1-10 Appearance and practice before the board. (a) A person may appear in the person's own behalf, a partner may represent the partnership, a bona fide officer or employee of a corporation or trust or association may represent the corporation, trust or association, and an officer or employee of an agency may represent the agency in any proceeding before the board.

(b) A person may be represented by or with counsel or other duly qualified representatives in any proceeding under these rules.

(c) A person shall not be represented in any proceeding before the board or a hearing officer except as stated in subsections (a) and (b) of this section.

(d) When a person acting in a representative capacity appears in person or signs any document or other papers in practice before the board, the person shall show the authority to act in that capacity.

(e) No person who has been associated with the board as a member, officer, employee, or counsel shall be permitted at any time to appear before the board in behalf of or to represent in any manner, any party in connection with any proceeding or matter which the person has handled or passed upon while associated in any capacity with the board.

(f) No person who has been associated with the board as a member, officer, employee, or counsel thereof shall be permitted to appear before the board in behalf of, or to represent in any manner, any person in connection with any proceeding or matter which was pending before the board at the time of the person's association with the board unless the person shall first have obtained the written consent of the board upon a verified showing that the person did not give personal consideration to the matter or proceeding which the consent is sought or gain particular knowledge of the facts thereof during the person's association with the board [Eff. 6/22/81] (Auth: HRS §171-6)
(Imp: HRS §91-2)

§13-1-11 Proceedings before the board. (a) The board may on its own motion or on petition or application of any interested person or persons or an agency of the state or county government hold proceedings as necessary from time to time for the purpose of obtaining information necessary or helpful in the

determination of its policies, the carrying out of its duties, or the formulation of its rules.

(b) For the purposes permitted by law, the board may subpoena witnesses and require the production of evidence.

(c) The board shall follow procedures that, in its opinion, best serve the purposes of the proceedings, unless specifically prescribed in these rules or chapter 91, Hawaii Revised Statutes.

(d) Any rule in this chapter may be suspended or waived by the board or the presiding officer to prevent undue hardship in any particular instance.

(e) Proceedings shall be commenced by order of the board upon its own motion, or by the filing of a petition or application the processing of which necessitates a statutory hearing. [Eff. 6/22/81] (Auth: HRS §171-6)
(Imp: HRS §§91-2, 92-16)

§13-1-12 Filing of documents. (a) All pleadings, applications, submittals, petitions, reports, maps, exceptions, briefs, memoranda, and other papers required to be filed with the board in any proceeding shall be filed with the chairperson. These papers may be sent by mail or hand-carried to the board office in Honolulu, Hawaii, within the time limit, if any, for filing. The date on which the papers are actually received by the office of the chairperson shall be deemed to be the date of filing.

(b) All papers shall be written, typewritten, or printed and signed in ink by the party signing the same or the party's duly authorized agent or attorney. The signature shall be legible. The signature of the person signing the document constitutes a certification that the person has read the document, that to the best of that person's knowledge, information, and belief every statement contained in the document is true and no statements are misleading; and that it is not interposed for delay.

(c) Unless otherwise specifically provided by a particular rule or order of the board, an original and three copies of all papers shall be filed. [Eff. 6/22/81] (Auth: HRS §171-6)
(Imp: HRS §91-2)

§13-1-13 Computation of time. Computation of time shall be as established by §1-29, HRS. [Eff. 6/22/81]
(Auth: HRS §171-6) (Imp: HRS §§1-29, 91-2)

§13-1-14 Continuances or extensions of time. Whenever a person or agency has a right or is required to take action within the period prescribed or allowed by these rules, by notice given thereunder or by an order, the board or its chairperson may, for good cause and if permitted by law:

(1) Before the expiration of the prescribed period, with or without notice, extend the period; or

(2) Upon application, permit the act to be done after the expiration of a specific period.
(Eff. 6/22/81) (Auth: HRS §171-6) (Imp. HRS §91-2)

§13-1-15 Amendment or refusal of documents. If any document filed with the board is not in substantial conformity with rules of the board as to the contents thereof, or which is otherwise insufficient, the board may refuse to accept the document, or may require its amendment. [Eff. 6/22/81]
(Auth: HRS §171-6) (Imp: HRS §91-2)

§13-1-16 Retention of documents by the board. All documents filed with or presented to the board may be retained in the files of the board. The board may permit the withdrawal of original documents upon submission of properly authenticated copies to replace the documents. [Eff. 6/22/81]
(Auth: HRS §171-6) (Imp: HRS §§91-2, 171-7)

§13-1-17 Board decision. All final orders, opinions or rulings entered by the board in a proceeding and rules and written policies promulgated by the board shall be served upon the parties or persons participating in the proceeding by regular mail or personal delivery by the board and may be released for general publication. Copies of the published materials shall be available for public inspection in the offices of the board or may be obtained upon request and upon payment of charges, if any. [Eff. 6/22/81] (Auth: HRS §171-6) (Imp: HRS §91-2)

§13-1-18 Counsel for the board. The attorney general, as counsel for the board, shall be a party to all proceedings governed by these rules. The attorney general or representative of the attorney general shall be designated as "Counsel for the Board," and shall be served with copies of all papers, pleadings, maps and documents and other papers as are all other parties to the same proceeding. [Eff. 6/22/81] (Auth: HRS §171-6)
(Imp: HRS §§28-4, 91-2)

§13-1-19 Substitution of parties. Upon motion and for good cause shown, the board may order substitution of parties; provided that in case of death of a party, substitution may be ordered without the filing of a motion. [Eff. 6/22/81]
(Auth: HRS §171-6) (Imp: HRS §91-2)

§13-1-20 Consolidations. The board, upon its own initiation or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings which involve substantially the same parties or issues which are the same or closely related, if it finds that the consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. [Eff. 6/22/81]
(Auth: HRS §171-6) (Imp: HRS §91-2)

SUBCHAPTER 3

RULEMAKING PROCEEDINGS

§13-1-21 Initiating proceedings. Pursuant to petition, or upon its own motion, when the board proposes to issue, amend, or repeal a rule, a public hearing shall be held as provided by law. [Eff. 6/22/81] (Auth: HRS §171-6) (Imp: HRS §§91-3, 91-6)

§13-1-22 Notice. (a) Notice of proposed rulemaking shall be published at least once in a newspaper of general circulation in the State and in each County affected by the proposed rule. All notices shall be issued at least twenty days prior to the date set for public hearing.

(b) A notice of the proposed issuance, amendment, or repeal of a rule shall include:

- (1) A statement of the date, time, and place where the public hearing shall be held;
- (2) Reference to the authority under which the issuance, amendment, or repeal of a rule is proposed;
- (3) A statement of the substance of the proposed rulemaking; and
- (4) In the case of a proposal to establish, change, or review forest reserve or watershed boundaries, in addition to the foregoing, a statement of the time and place where maps showing the proposed or existing boundaries within the county may be inspected prior to the public hearing.

(c) In any rulemaking proceeding where the board deems it warranted, a further notice of proposed rulemaking may be issued by publication thereof in a newspaper of general circulation in the State. [Eff. 6/22/81] (Auth: HRS §171-6) (Imp: HRS §§91-3, 91-6)

§13-1-23 Time and place. Each hearing shall be held at the time and place set in the notice of hearing, but may at that time and place be continued by the presiding officer from day to day or adjourn to a later date or to a different place without notice other than the announcement thereof at the hearing. Where the proposed rulemaking affects only one county, the public hearing shall be held in that county. [Eff. 6/22/81] (Auth: HRS §171-6) (Imp: HRS §§91-3, 92-16)

§13-1-24 Conduct of rulemaking hearings. (a) Each hearing shall be presided over by the chairperson of the board or by its designated representative. The hearing shall be conducted in such a way as to afford to interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations

and to take all other actions necessary to the orderly conduct of the hearing.

(b) At the commencement of the hearing, the presiding officer shall read the pertinent portions of the notice of the hearing and shall then outline briefly the procedure to be followed. Evidence shall then be received with respect to the matters specified in the notice of hearing in the order the presiding officer shall prescribe.

(c) All interested persons shall be given reasonable opportunity to offer evidence with respect to the matters specified in the notice of hearing. Every witness may, before proceeding to testify, be sworn, and may be required thereafter to state the witness' name, address, and whom the witness represents at the hearing, and give any other information respecting the witness' appearance as the presiding officer may request. The presiding officer shall confine the evidence to the questions before the hearing but shall not apply the technical rules of evidence. Every witness shall be subject to questioning by the presiding officer or by any other representative of the board, but cross-examination by private persons shall not be permitted except if the presiding officer expressly permits it.

(d) All interested persons or agencies of the State or its political subdivisions shall be afforded an opportunity to submit data, views or arguments which are relevant to the issues. In addition, or in lieu thereof, persons or agencies may also file with the board within fifteen days following the close of public hearing a written protest or other comments or recommendations in support of or in opposition to the proposed rulemaking. Persons designated by the presiding officer shall be furnished with copies of any written protest or other comments or recommendations, and they shall be afforded a reasonable time within which to file their comments in reply to the original protest, comments, or recommendations. Written protest, comments, or recommendations or replies thereto shall not be accepted unless an original and ten copies (or lesser number of copies as may be specifically agreed to by the presiding officer) are filed. The period for filing written protest, comments, or recommendations may be extended by the presiding officer for good cause.

(f) Unless otherwise specifically ordered by the board or the presiding officer, testimony given at the hearing need not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record. Unless the presiding officer finds that the furnishing of the required number of copies impracticable and reduces the number, eleven copies of the exhibits shall be submitted.

(g) At the close of the final public hearing, the board shall announce the date when its decision shall be announced, or the board may, if it so desires, make the decision at the public

hearing. The board shall consider all relevant comments and material of record before taking final action in a rulemaking proceeding. [Eff. 6/22/81] (Auth: HRS §171-6) (Imp: HRS §§91-3, 92-16)

§13-1-25 Emergency rulemaking. Notwithstanding the foregoing rules, if the board finds that an imminent peril to public health, safety, or morals requires adoption, amendment, or repeal of a rule upon less than twenty days' notice of hearing, and states in writing its reason for the finding, it may proceed without prior notice or hearing or upon an abbreviated notice and hearing to adopt an emergency rule to be effective for a period not longer than 120 days without renewal. [Eff. 6/22/81] (Auth: HRS §171-6) (Imp: HRS §91-3)

§13-1-26 Petitions for adoption, amendment or repeal of rules. (a) Any interested person or any agency of the state or county government may petition the board for the issuance, amendment, modification, or repeal of any rule which is designed to implement, interpret, or prescribe law, policy, organization, procedure, or practice requirements of the board.

(b) Petitions for rulemaking shall set forth the text of any proposed rule or amendment desired or specifying the rule the repeal of which is desired and stating concisely the nature of the petitioner's interest in the subject matter and the reasons for seeking the issuance, amendment, or repeal of the rule and shall include any facts, views, arguments, and data deemed relevant by petitioner. The board may require the petitioner to adequately and properly notify persons or governmental agencies known to be interested in the proposed rulemaking of the existence of the filed petition. No request for the issuance, amendment, modification, or repeal of a rule which does not conform to the requirements set forth above shall be considered by the board.

(c) Petitions for rulemaking shall become matters of public record upon filing. The board shall within thirty days following the filing of the petition either deny the petition in writing or initiate public rulemaking procedures. No public hearing, oral argument, or other form of proceedings need be held, but if the board determines that the petition discloses sufficient reasons in support of the relief requested to justify the institution of public rulemaking proceedings, the procedures to be followed shall be as set forth in §13-1-21 and §13-1-22. Where the board determines that the petition does not disclose sufficient reasons to justify the institution of public rulemaking procedures, or where the petition for rulemaking fails in any material respect to comply with the requirements of these rules, the petitioner shall be so notified together with the grounds for the denial. The provisions of this section shall not operate to prevent the board, on its own motion, from acting on any matter disclosed in any petition. [Eff. 6/22/81] (Auth: HRS §171-6) (Imp: HRS §§91-6, 92-16)

SUBCHAPTER 4

SPECIAL PROCEEDINGS

§13-1-27 Petition for declaratory rulings. (a) On petition of an interested person, the board may issue a declaratory order regarding the applicability of any statutory provision or of any rule or order of the board. Petitions for the issuance thereof shall state clearly and concisely the controversy or uncertainty, shall cite the statutory authority involved, shall include a complete statement of the facts and the reasons or grounds prompting the petition, together with full disclosure of petitioner's interest and shall conform to the requirements of §13-1-12.

(b) The board, upon receipt of the petition, may require the petitioner to file additional data or a memorandum of legal authorities in support of the position taken by the petitioner.

(c) The board may, without notice or hearing, dismiss a petition for declaratory ruling which fails in any material respect to comply with the requirements of this section.

(d) After review of the information filed pursuant to this section the board may order a hearing on the petition. Any petitioner or interested party who requests a hearing on the petition shall set forth in writing the reasons why the information filed will not permit a fair and expeditious disposition of the petition. If the request for hearing is dependent upon factual assertion, affidavits establishing those facts shall accompany the request. In the event a hearing is ordered by the board, §§91-9 through 91-13, Hawaii Revised Statutes, shall govern the proceeding.

(e) Notwithstanding the other provisions of this section, the board may, on its own motion or upon request but without notice or hearing, issue a declaratory order to terminate a controversy or to remove uncertainty. [Eff. 6/22/81]

(Auth: HRS §171-6) (Imp: HRS §§91-8, 92-16)